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**Health Care and Retirement Corporation, d/b/a  
Heartland of Martinsburg and District 1199,  
the Health Care and Social Service Union,  
SEIU, AFL-CIO. Case 5-CA-25281**

July 31, 1995

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND BROWNING

Pursuant to a charge filed by the Union on April 14, 1995, the General Counsel of the National Labor Relations Board issued a complaint on May 26, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish relevant and necessary information following the Union's certification in Case 5-RC-13892. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On June 26, 1995, the General Counsel filed a Motion for Summary Judgment. On June 28, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 12, 1995, the Respondent and the Union filed responses.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

The complaint alleges that since about March 13, 1995, the Respondent has refused to recognize and bargain with the Union as the exclusive bargaining representative of the unit. In addition, the complaint alleges that since about March 30, 1995, the Respondent has failed to furnish or provide the Union with the following requested information:

- (1) A list of all bargaining unit employees arranged by classification including names, addresses, phone numbers, social security numbers, present wage rates, date of hire and average number of hours worked per week that each has worked during the last 12 months.
- (2) The total number of hours worked by all employees during each of the last 3 years.

- (3) The total number of hours worked for each current employee on the 2nd and 3rd shift for the last 12 months.
- (4) The total number of hours worked by all employees during each of the last 3 years on the second and third shifts.
- (5) Total number of overtime hours paid each employee for the last 12 months.
- (6) Total number of overtime hours paid to all employees during each of the last 3 years.
- (7) Copy of staffing patterns for all units including a shift by shift breakdown for each classification in each unit as well as the staffing patterns on weekends per unit.
- (8) A copy of all current job descriptions.
- (9) A copy of all current work rules.
- (10) A copy of all policies related to employment conditions and employees benefits including a copy of all employee handbooks and manuals.
- (11) Summary plan description for all insurance plans including premium rates and contribution rates for all overages for each of the last 3 years.
- (12) Names of employees enrolled in each category (employee only, employee plus 1, family, etc. of each insurance plan and pension).
- (13) A Copy of the most recent audited financial report.
- (14) A copy of the Medicare and Medicaid cost computation sheet for the last 2 years.

The complaint further alleges that since about March 30, 1995, the Respondent has also refused to furnish the Union with requested information concerning the March 1995 suspension of employee Wanda Pannuty, including her personnel file, any witness statements pertaining to her discharge, and any investigative reports performed by the Respondent or outside agencies pertaining to the case, and by refusing the Union's request to recognize it as the exclusive bargaining representative of Pannuty and to bargain about her suspension and subsequent termination. Finally, the complaint alleges that since about April 18, 1995, the Respondent has also failed to provide the Union with the following additional information: (1) Name, address, phone number of each member; and (2) Date of hire, job title, rate of pay, shift and status (i.e., full time, part-time, temporary, etc.).

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the Union's certification on the basis of its objections to conduct affecting the results of the election in the representation proceeding. In addition, the Respondent in its answer denies that the information requested by the Union is necessary and relevant to its duties as the exclusive bargaining representative of the unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues warranting a hearing regarding the Union's request for information. With the exception of employee social security numbers and the Respondent's most recent audited financial report,<sup>1</sup> the information requested by the Union is presumptively relevant for purposes of collective bargaining and must be furnished on request.

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent, an Ohio corporation with an office and place of business in Martinsburg, West Virginia, has been engaged as a health care institution in the operation of a nursing home, providing inpatient medical and professional care services for the elderly. During the 12-month period preceding the issuance of the complaint, the Respondent in conducting its business operations derived gross revenues in excess of \$100,000 and purchased and received at its Martinsburg, West Virginia facility goods and materials valued in excess of \$10,000 directly from points located outside the State of West Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

<sup>1</sup> The Board has held that social security numbers are not presumptively relevant. See *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991). Financial data is also not presumptively relevant. See *Ohio Power Co.*, 216 NLRB 987 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976). This does not excuse the Respondent's failure to supply all of the other information requested by the Union, however. See *Sea-Jet*, *supra*. Such information clearly is presumptively relevant and the Respondent has not asserted that any of that information is confidential or otherwise privileged. Accordingly, we will order the Respondent to furnish all of the information requested by the Union with the exception of employee social security numbers and the Respondent's most recent audited financial report.

Chairman Gould concurs with the result concerning the furnishing of social security numbers and will take a close look at this issue in future cases.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. The Certification

Following the election held July 1, 1993, the Union was certified on February 17, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time service and maintenance employees employed by the Employer at its Martinsburg, West Virginia facility, including nurses aides, certified nurses aides, restorative aides, ward clerks, medical records clerks, dietary assistants, cooks, laundry, housekeeping, maintenance and activities employees; but excluding all registered nurses, licensed practical nurses, department heads, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusal to Bargain

Since about March 13, 1995, the Respondent has refused the Union's request to recognize and bargain with it as the exclusive bargaining representative of the unit. In addition, since about March 30 and April 18, 1995, the Respondent has failed to furnish or provide the Union with relevant and necessary information. Finally, since about March 30, 1995, the Respondent has refused the Union's request to recognize it as the exclusive bargaining representative of employee Wanda Pannuty and to bargain with the Union about her discipline. We find that by the foregoing conduct the Respondent has unlawfully refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has unlawfully refused to recognize and bargain with the Union, we shall order it to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. In addition, having found that the Respondent has unlawfully refused to provide the Union with relevant and necessary information, we shall order the Respondent to furnish the Union the information requested with the exception of employee social security numbers and its most recent audited financial report. Finally, having found that the Respondent unlawfully refused the Union's request to

recognize and bargain with it regarding the discipline of employee Wanda Pannuty, we shall order the Respondent to bargain on request with the Union regarding her discipline.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, Health Care and Retirement Corporation, d/b/a Heartland of Martinsburg, Martinsburg, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with District 1199, the Health Care and Social Service Union, SEIU, AFL-CIO as the exclusive bargaining representative of the employees, by refusing to recognize and bargain with the Union, refusing to recognize and bargain with the Union regarding the discipline of employees, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and part-time service and maintenance employees employed by the Employer at its Martinsburg, West Virginia facility, including nurses aides, certified nurses aides, restorative aides, ward clerks, medical records clerks, dietary assistants, cooks, laundry, housekeeping, maintenance and activities employees; but excluding all registered nurses, licensed practical nurses, department heads, office clerical employees, guards and supervisors as defined in the Act.

(b) On request, recognize and bargain with the Union regarding the discipline of employee Wanda Pannuty.

(c) Furnish the Union the information that it requested with the exception of employee social security

numbers and the Respondent's most recent audited financial report.

(d) Post at its facility in Martinsburg, West Virginia, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 31, 1995

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William B. Gould IV, Chairman

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James M. Stephens, Member

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Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with District 1199, the Health Care and Social Service Union, SEIU, AFL-CIO as the exclusive bargaining representative of the employees, by refusing to recognize and bargain with the Union on request, refusing to recognize and bargain with the Union regarding the discipline of employees, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and part-time service and maintenance employees employed by us at our Martinsburg, West Virginia facility, including nurses aides, certified nurses aides, restorative aides, ward clerks, medical records clerks, dietary assistants, cooks, laundry, housekeeping, maintenance and activities employees; but excluding all

registered nurses, licensed practical nurses, department heads, office clerical employees, guards and supervisors as defined in the Act.

WE WILL, on request, recognize and bargain with the Union regarding the discipline of employee Wanda Pannuty.

WE WILL furnish the Union the information it requested with the exception of employee social security numbers and our most recent audited financial report.

HEALTH CARE AND RETIREMENT CORPORATION, D/B/A HEARTLAND OF MARTINSBURG